

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

MERCY HOSPITAL  
MERCY SOUTHWEST HOSPITAL<sup>1/</sup>

Employer

and

Case No. 31-RC-7993

SEIU NURSE ALLIANCE LOCAL 535<sup>2/</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3/</sup>
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>4/</sup>
3. The labor organizations involved claim to represent certain employees of the Employer.<sup>5/</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full time and regular part time Registered Nurses (“RNs”) employed in positions requiring an RN license who are employed at the Employer’s facilities at 2215 Truxton Avenue and 400 Old River Road in Bakersfield California.

**EXCLUDED:** Home health nurses, all other employees, guards and supervisors as defined in the Act.<sup>6/</sup>

### **DIRECTION OF ELECTION<sup>7/</sup>**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be

represented for collective bargaining purposes by **SEIU NURSE ALLIANCE LOCAL 535**, by **CALIFORNIA NURSES' ASSOCIATION**, or by neither.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before **May 11, 2001**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 18, 2001.

**DATED** at Los Angeles, California this 4<sup>th</sup> day of May, 2001.

/s/ James J. McDermott  
James McDermott, Regional Director  
National Labor Relations Board  
Region 31

## FOOTNOTES

- 1/ The name of the Employer appears as corrected at the Hearing.
- 2/ The name of the Petitioner appears as corrected at the Hearing.
- 3/ The Intervenor filed a Motion to Correct Transcript. It is my intention to issue an Order Granting Motion to Correct Transcript if no party files an opposition to that Motion by May 14, 2001.
- 4/ With respect to jurisdiction, I take administrative notice of the stipulation in Case 31-RC-7790, which establishes the following facts. Mercy Hospital d/b/a Mercy Hospital and Mercy Southwest Hospital is a California corporation engaged in the operation of acute health care facilities, with a principal place of business in Bakersfield, California. During the past 12 months, the Employer derived gross revenues in excess of \$250,000. During that same period of time, the Employer purchased and received at its California facilities goods valued in excess of \$5,000 directly from enterprises located outside the State of California. The Employer thus satisfies the statutory jurisdictional requirement as well as the Board's discretionary standard for asserting jurisdiction herein. *Butte Medical Properties d/b/a Medical Center Hospital*, 168 NLRB 266 (1967).
- 5/ California Nurses' Association has intervened in this proceeding.
- 6/ Catholic HealthCare West operates several hospitals in Bakersfield California, including Mercy Hospital, Mercy Southwest Hospital, and Memorial Hospital. The Petitioner seeks to represent a unit of registered nurses ("RNs") at the Mercy Hospital and Mercy Southwest Hospital facilities. The Intervenor represents RNs at the Memorial Hospital facility. The Employer asserts that it would be inappropriate to direct an election at this time in the petitioned-for unit because the Employer is relocating services from Mercy Hospital to Mercy Southwest Hospital and Memorial Hospital and the RNs who currently work at Mercy

Hospital will be transferred to either Mercy Southwest Hospital or Memorial Hospital.

In support of its position, the Employer presented the Senior Vice-President and Chief Operating Officer for Catholic Healthcare West-North Market, Jeffrey Winter, as a witness. Mr. Winter, who assumed responsibility for the Bakersfield area in January 2001, is responsible for the relocation of services from Mercy Hospital to the Memorial Hospital and Mercy Southwest Hospital facilities. The concept of relocating these services originated in 1996, when Memorial Hospital entered into an affiliation agreement with Catholic HealthCare West. According to Mr. Winter, it is contemplated that upon relocation of services from Mercy Hospital to Mercy Southwest Hospital and Memorial Hospital, Mercy Hospital will be used for other purposes or sold.

Mr. Winter reports to the President of the Southern California Division for Catholic HealthCare West and to the Memorial and the Regional Boards of Directors. The annual capitol budget, which includes funding for the relocation/consolidation plan, has been approved by the Memorial Board and the Regional Board. However, Mr. Winter did not know whether, as of the date of the hearing in this matter, the budget had been approved by the System Board, which must also approve the capitol budget.

Prior to Mr. Winter assuming responsibility for the relocation process, a consultant group worked on a consolidation/relocation plan. The Employer introduced into evidence a copy of a brief power point presentation summarizing the plan. This plan, which was prepared sometime during the period from October 2000 through January 2001, sets June 1, 2001 as the expected completion date for the relocation of services from Mercy Hospital to Mercy Southwest Hospital and Memorial Hospital. The plan to complete the process by that date was changed when the operational structure of Catholic HealthCare West was reorganized and the new leadership determined that an unfavorable financial situation required that the

Employer first gain operational control over the facilities. The delay was caused by the need to first improve the Employer's financial condition before undertaking the relocation/consolidation process.

The Employer also introduced into evidence a copy of a power point presentation that Mr. Winter recently presented to the Memorial and Regional Boards of Directors. This presentation describes in very general terms the anticipated consolidation/relocation process. According to Mr. Winter, there would be a full day retreat the week after the hearing in this matter to develop more concrete plans. Mr. Winter explained that the Employer must meet with medical practitioners on a specialty-by-specialty basis to ensure that the physicians' needs will be met by the planned consolidation/relocation. These meetings to elicit input, involvement and consensus from physicians were also scheduled to begin the week after the hearing in this matter.

According to the plan presented by Mr. Winter, the specialty-by-specialty planning would take place between May and July 2001 and during the period July through August 2001, the Employer would determine construction estimates and would begin the consolidation schedule, including personnel planning. The plan provides that the consolidation/relocation would be implemented during the period August through November 2001. With respect to the target completion date of November 2001, Mr. Winter testified that "[i]f all goes well and there are no other state or local agency issues that prevent us, the hope would be that we would be able to achieve relocation by November 30 of this year." Mr. Winter explained that the expected date of completion assumes that none of the governmental agencies that will be involved in the process will hold hearings on the relocation or will otherwise cause a delay in the process.

The record reveals that certain services have been performed for quite some time on a consolidated basis. For example, the dietary, housekeeping and plant services are performed on a regional level. Some services have already been relocated

from Mercy Hospital. At some point in time subsequent to 1996, the gastroenterology lab was relocated to Memorial Hospital. Also, occupational health services have been relocated to Mercy Southwest Hospital and oncology patients, who previously were cared for at Mercy Hospital, are now being cared for at Mercy Southwest Hospital. Hematology and chemistry lab work for all three facilities is now being performed at Memorial Hospital. The plan is that by November 2001, the remainder of the lab work currently being performed at Mercy Hospital would be relocated to Memorial Hospital and/or to Mercy Southwest Hospital. The plan also includes the relocation of the following services to Memorial Hospital and/or Mercy Southwest Hospital: telemetry; inpatient med/surg; ambulatory services; radiology; surgery services and care management services. It is anticipated that these relocations will involve the relocation of RNs from Mercy Hospital to Mercy Southwest Hospital and/or Memorial Hospital. However, the Employer is unable to determine at this time how many RNs would be relocated to each facility.

The relocation plan includes the establishment of a formal emergency room facility at Mercy Southwest Hospital. To facilitate this, the urgent care center currently occupying the emergency room space will be moved to a freestanding location. The establishment of an emergency room at Mercy Southwest Hospital also requires the establishment of a small intensive care unit at that facility. A community impact study must be conducted before the emergency room can be relocated to Mercy Southwest Hospital.

Certain elements of the planned changes do not affect the relocation of services away from Mercy Hospital. Thus, for example, the plan includes the establishment of a specialty in women's and children's services at Mercy Southwest Hospital. This would involve the consolidation of the pediatrics department, currently housed at both Mercy Southwest Hospital and Memorial Hospital, so that it would only exist at Mercy Southwest Hospital.



The plan recently presented by Mr. Winter to the governing Boards of Directors recognizes that there are regulatory and functional constraints on the timeframe. The Employer must submit applications and drawings concerning the facilities to which services are being relocated to the Office of Statewide Health Planning and Development (“OSHDP”). The Employer has not yet received the necessary approvals from OSHDP. In fact, OSHDP could require hearings concerning the relocation of services. Also, the Employer must contact the State Attorney General’s Office concerning the planned consolidation and relocation of services. The State Attorney General could direct that hearings be conducted concerning the planned changes and, indeed, the State Attorney General could attempt to block the planned changes.

Furthermore, the Employer must obtain building and planning department approvals for construction, including the construction of the new urgent care facility, the construction of the intensive care unit at Mercy Southwest Hospital, and the structural modifications required so that the now dormant rooms at Memorial Hospital will meet current code standards. As of the date of the hearing, the applications to the local building and planning departments had not been made.

In addition to the recognized regulatory constraints on the expected timeframe, the plan presented by Mr. Winter to the Boards of Directors recognizes the following functional constraints on the timeframe: construction timeframes; equipment procurement; medical staff issues; funding procurement and personnel recruitment.

Although the testimony concerning the planned consolidation of the Memorial Hospital and Mercy Southwest Hospital pediatrics departments into one department at Mercy Southwest Hospital does not directly relate to the relocation of services away from Mercy Hospital, it is illustrative of the evolving nature of the plans. Mr. Winter testified that although “theoretically” RNs would no longer be needed to work in pediatrics at Memorial Hospital after the consolidation, he

admitted that it was premature to state that since the Employer had not yet had the requisite discussions with the pediatricians and family practitioners who would be affected. He explained that management's best-laid plans are not concrete until the Employer has that type of dialogue with the affected physicians. As noted above, the Employer has not yet completed the specialty-by-specialty communications concerning the relocation of services away from Mercy Hospital.

The Board will dismiss a representation petition when there will be an imminent cessation of operations. *Hughes Aircraft Co.*, 308 NLRB 82 (1992). The Board has consistently held that it will not conduct an election at a time when a permanent layoff is imminent and certain. *Id.* at 83. However, the Board will not dismiss a petition when an anticipated cessation of operations is not imminent and certain.

In *Canterbury of Puerto Rico*, 225 NLRB 309 (1976), the Board affirmed a Decision and Direction of Election issued by an Acting Regional Director who found the Employer's stated intention, supported by a corporate resolution to terminate all manufacturing activities within six months, to be too speculative a basis to bar an election. Similarly, in *Gibson Electric*, 226 NLRB 1063 (1976), the Board reversed a decision by a Regional Director in May 1976 to dismiss a petition based upon the Employer's contention that the work was scheduled to be completed by mid-June 1976. The Board found that since the Employer's anticipated completion date was inaccurate and the work was still in progress when it issued its decision in November 1976, there was no impediment to ordering an election.

I conclude that although the Employer does have a plan to consolidate its services and relocate services from Mercy Hospital, the record fails to establish with sufficient certainty that there will be an imminent closure of the Mercy Hospital facility. In this regard, I also note the uncertainty as to the number of RNs who

will be transferred to Memorial Hospital and how many RNs will be transferred to Mercy Southwest Hospital, remaining in the petitioned-for bargaining unit.

Having determined that the planned relocation of services from Mercy Hospital to Mercy Southwest Hospital and Memorial Hospital does not preclude the issuance of a direction of election at this time, I further conclude that the petitioned-for two facility unit is appropriate. Mercy Hospital and Mercy Southwest Hospital currently operate under one license. Mercy Southwest Hospital is not a “full hospital” providing a full range of acute care services. At the present time, certain services are provided at Mercy Southwest Hospital and certain other services are provided at Mercy Hospital. There is one integrated care management department for both facilities and RNs can be assigned to either location. There is one employee health department for both facilities. Moreover, the RNs at both facilities have the same benefits and have the same job classifications and wage scales. In addition, they are governed by the same personnel policies and procedures and there is one human resource department for both facilities. The record also reveals interchange amongst the RNs at both facilities. Accordingly, I conclude that the petitioned-for unit is appropriate. *Manor Healthcare Corp.*, 285 NLRB 224 (1987)

The record does not reveal the number of RNs in the bargaining unit.

- 7/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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